

**Zoning Board of Adjustment
1200 Mountain Ave., Middlesex, NJ 08846
Regular Meeting Minutes
July 2, 2014
7:30 PM**

1. Call to Order

Chairperson DiMura called the meeting to order at 7:36pm.

2. Open Public Meeting Act Statement

Chairperson DiMura read the Open Public Meeting Act Statement.

3. Roll Call

Upon the call of the roll the following members were present John Anello, Ron DiMura, Joseph McNulty, Anthony Vietri, Phil Lopa, Anthony Thompson, Joseph Waide.

Also present was Board Attorney Ms. Joan Dowling and Zoning Officer Ms. Barrie Palumbo.

4. Minutes

Member Lopa made a motion to approve the February 6, 2013 Executive meeting minutes, seconded by Member Vietri. Vote: Member Anello- abstain, Chairperson DiMura- abstain, Member McNulty- yes, Member Vietri- yes, Member Lopa-yes, Member Thompson- abstain, Member Waide- abstain. Motion passed.

Member Lopa made a motion to approve the May 1, 2013 Executive meeting minutes, seconded by Member Vietri. Vote: Member Anello- abstain, Chairperson DiMura- abstain, Member McNulty- abstain, Member Vietri- yes, Member Lopa-yes, Member Thompson- abstain, Member Waide- abstain. Motion passed.

Member Anello made a motion to approve the May 21, 2014 meeting minutes, seconded by Member Lopa. All in favor. Motion passed.

5. New Business

**Z2014-02
New Evergreen Development LLC
1001 Lincoln Blvd.
Block 246 Lot 1.01**

Mr. Donald Whitelaw stated that he is representing New Evergreen.

Mr. Whitelaw gave a history of previous applications that had been before the Board and then stated the current occupants of the building.

Mr. Whitelaw stated that the applicant has a new tenant, Great American Sealcoating.

Mr. Whitelaw submitted a packet of correspondence to the Board, Exhibit A17022014 that was entered into the record

Mr. Whitelaw referenced the letter of denial from the Zoning Officer dated February 4, 2014.

Mr. Roger DeNiscia, Planner for New Evergreen gave a lengthy explanation as to why the use was permitted in response to the Zoning Officer's letter.

Mr. DeNiscia referenced a photo board with 8 pictures of the property.

The photo board was entered as Exhibit A27022014.

The parking for the site was discussed.

Mr. DeNiscia questioned the definition of chemical and referenced Ms. Palumbo's letter dated February 4, 2014.

Ms. Palumbo stated that the use is permitted but the applicant needs to have site plan approval before the applicant can occupy.

Ms. Palumbo's letter referenced Ordinances: 420-13.A(1),(4) and 420-23.

A.

A change in the occupancy of a building or the utilization of a building or land which meets any of the following criteria shall be determined to be a change of use under this chapter:

(1)

The proposed use requires more off-street parking spaces than the previous use, based upon parking requirements in Chapter **248**, Land Development;

Ordinance 420-13.A (4)

(4)

The proposed use involves the storage or handling of chemicals or hazardous substances.

Ordinance 420-23.B

B.

In all nonresidential zones, no article, equipment, vehicle, supplies or material shall be kept, stored or displayed outside the confines of any building unless the same is screened by planting or fencing, as approved by the Planning Board

Chairperson DiMura asked about the new company's vehicles.

Member Anello asked if this site is open to the public or had fences surrounding it.

Member Thompson asked if the tenant already occupies the building.

Mr. Whitelaw stated that Great American Sealcoating moved into the building April 2014.

Mr. Whitelaw stated that the company uses non-hazardous materials.

Member Thompson asked if there were any OSHA (Occupational Safety and Health Administration) materials that the Board could see.

Mr. Whitelaw stated that there are MSDS (Material Safety Data Sheets).

Ms. Palumbo stated that there are propane tanks on the site and that there are trailers, the applicant does not have previous site plan approvals for this.

Board Members questioned why the applicant did not just go the Planning Board for site plan approval.

Mr. Whitelaw explained that it is a lengthy process and most tenants won't wait that long to occupy a space.

Ms. Dowling duly swore in Timothy Smeltz, owner of the business Great American Sealcoating, 1001 Lincoln Blvd.

Mr. Whitelaw asked Mr. Smeltz to explain the nature of the material.

Mr. Smeltz stated that it is asphalt, water based material and not regulated.

MSDS (Material Safety Data Sheet) for Velvetop Polymer Modified Asphalt Sealer was entered as Exhibit A37022014.

Mr. Smeltz explained the procedures of using this product in his business.

Member Anello asked about the flash point on this product.

Mr. Smeltz stated that the propane is kept in a chain link locked cage.

Chairperson DiMura asked Mr. Smeltz why he had moved in without the approvals from the Borough.

Mr. Smeltz stated that he was given approval by the landlord.

Chairperson DiMura asked if the applicant had read the bottom of the application and why did he disregard the Borough Ordinances.

Ms. Dowling duly swore in Joseph Boniakowski, owner of the property.

Mr. Boniakowski explained his prior applications, approvals and dealings with the town for many years.

Member Waide left the meeting at 9:50pm

Mr. Whitelaw questioned Ms. Palumbo on the Borough procedure regarding a CCO or CLO.

Chairperson DiMura stated that Ms. Palumbo's job is to enforce the Borough Ordinances and even if "chemical" is vague, she can't change the Ordinance.

Chairperson DiMura explained how an Ordinance would get changed.

Member Anello made a motion of agreement with the Zoning Officer's letter, seconded by Member Thompson. Vote: Member Anello-yes, Member DiMura-yes, Member McNulty-yes, Member Vietri-yes, Member Lopa-yes, Member Thompson-yes. Motion passed.

Member Vietri made a motion to have a five minute recess, seconded by Member Thompson. Vote: All in favor.

Chairperson Dimura reopened the meeting at 10:41pm.

Roll call was taken with the following members being present: Member Anello, Chairperson DiMura, Member McNulty, Member Vietri, Member Lopa, Member Thompson.

Z2014-03
Kavango Inc.
544 Lincoln Blvd.
Block 316 Lot 6

Mr. Whitelaw stated that he is representing Kavango Inc.

Ms. Dowling duly swore in Peter Riggs, 205 Hallock Ave. of Kavango Inc.

Mr. Whitelaw stated that this was similar to the previous application due to Ordinance 420-13.A(4)

(4)

The proposed use involves the storage or handling of chemicals or hazardous substances.

Mr. Riggs stated that he has a master's degree in Chemical Engineering.

Mr. Riggs stated the company makes air fresheners, such as the ones that hang on a car mirror.

Mr. Riggs stated that only 2 grams of fragrance oil is dropped onto the freshener.

Mr. Riggs stated that they don't store large amounts of the fragrance oil and the maximum on the property would be 80 gallons.

Mr. Riggs described the space that he wants to occupy as 14,000 sq. ft.

Mr. Riggs stated that 20% of the company operations is packaging.

Mr. Riggs stated the oil does not contain alcohol or perfumes.

Mr. Riggs stated that the hours of operation are 8am to 4pm.

Mr. Riggs stated at the current location on Hallock Ave they have not gotten any complaints from the neighbors.

Member Vietri asked if the employees have to wear any breathing apparatuses.

Mr. Riggs stated that breathing apparatuses are not required only an eye wash and shower to comply with OSHA site safety plan.

Member Vietri asked if there was any special ventilation that would be in the building.

Mr. Riggs stated that no special ventilation is required.

Mr. Whitelaw stated that since this is an interpretation and not an appeal with the minor nature of the use the Board has more lead way.

Chairperson DiMura, Member Anello, Member Thompson, Member Lopa, Member Vietri, Member McNulty recommended to have the applicant get site plan approval.

Member Lopa stated that this Ordinance should be changed.

Member Anello made a motion that site plan approval was needed, seconded by Member Thompson. Vote: Member Anello- yes, Member DiMura-yes, Member McNulty-yes, Member Vietri-yes, Member Lopa-yes, Member Thompson-yes. Motion passed.

Mr. Riggs suggested that the Ordinance change could possibly include limits on the amount of volume of a chemical.

Chairperson DiMura opened the meeting to the public.

There were no public comments.

There being no further business Member Anello made a motion to adjourn the meeting at 11:17pm,seconded by Member Thompson. Vote: All in favor. Meeting adjourned.

Secretary

Clerk